

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Hayward Hall of Justice

Matthew Lane
Plaintiff/Petitioner(s)
VS.
Ferguson Enterprises, LLC
Defendant/Respondent(s)

No. 22CV020738

Date: 06/16/2023

Time: 9:00 AM

Dept: 512

Judge: Eumi Lee

ORDER re: Hearing on Motion for Order
Motion for Order Approving
PAGA Settlement; filed by
Matthew Lane (Plaintiff)

Matter was not contested and tentative ruling is affirmed as follows:

The Motion for Final Approval of Settlement filed by Matthew Lane on 06/07/2023 is Granted.

Plaintiff Matthew Lane ("Plaintiff") moves for approval of the settlement of claims against defendant Ferguson Enterprises, LLC ("Defendant") for civil penalties owed to the Labor and Workforce Development Agency ("LWDA") pursuant to the Labor Code Attorneys General Act of 2004 ("PAGA") (Labor Code §§ 2698 et seq.).

The motion is GRANTED.

LEGAL STANDARDS

PAGA actions are in the nature of a qui tam proceeding in that plaintiffs seek civil penalties that would otherwise be recoverable by the LWDA. (Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal.4th 348, 382 (abrogated on other grounds by Viking River Cruises, Inc. v. Moriana (2022) 142 S.Ct. 1906).) Plaintiffs cannot bring "individual" claims under PAGA; they may only bring the action on behalf of themselves and all other aggrieved employees to vindicate the LWDA's interest in enforcement of the Labor Code. (Labor Code § 2699(c) & (g)(1); Williams v. Superior Court (2015) 237 Cal.App.4th 642, 649.) Any monetary penalties assessed against the defendant are split between the LWDA and named plaintiffs, with 75 percent going to the LWDA. (Labor Code § 2699(i).) Even outside of the settlement context, the Court has the authority and discretion to diminish penalty awards that would be "unjust, arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(2).)

Representative litigants must submit any settlement of a PAGA representative action for Court approval. (Labor Code § 2699(l)(2).) The standard for approval of these settlements remains almost entirely unelaborated. Unlike government entities represented in False Claims Act qui tam actions, the LWDA does not have a statutory right to intervene or object to settlement.

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(Compare Gov. Code § 12652(c)(1), (e)(2)(b), (f)(2)(B), with Labor Code § 2699(l).) Because the LWDA is not present at the negotiating table, the Court's review of a PAGA settlement must make sure that the interests of the LWDA in civil enforcement are defended and that the settlement is fair, adequate, and reasonable under all the circumstances. (Accord, *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133; see also Gov. Code § 12652(e)(2)(B) [requiring False Claims Act qui tam settlements be "fair, adequate, and reasonable under all the circumstances"].)

The Court therefore takes guidance from the context of class action settlements, which must also be found to be "fair, adequate, and reasonable." (See, e.g., *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244.) In approving class action settlements, the Court considers (1) the relative strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation of this dispute; (3) the risk of maintaining class status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel that settlement is reasonable; and (7) the presence or lack of any objections to the proposed settlement. (See *id.* at 244-245; *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801.)

At least two of these factors are not analogous in the PAGA settlement context: risk of maintaining class action status and reaction of other aggrieved employees. (Accord, *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal., Aug. 25, 2017, No. 16-CV-04708-LHK) 2017 WL 3670794, at *3 [discussing factors elaborated in *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026].) Class action status is irrelevant because PAGA actions are not certified.

The interest of absent aggrieved employees in a PAGA action is different than the interests of absent class members. On the one hand, an absent aggrieved employee has no more interest in a PAGA litigation than he has in an LWDA enforcement action. On the other hand, absent aggrieved workers have a financial stake in the outcome of the litigation because they stand to benefit from 25 percent of the recovered penalties and the settlement would stand as *res judicata* against any later PAGA action. In class action practice, the financial and due process interests of absent class members are protected through a dual-track settlement approval procedure and the requirement that the parties provide notice to the class. (CRC 3.769.) In PAGA cases, there is no express requirement of a similar procedure. Because the absent aggrieved employees are not real parties in interest, the Court does not find it necessary to create one.

The Court also notes that PAGA claims are often settled in the context of class action claims brought to enforce a right to civil recovery and restitution for the same violations of the Labor Code. In these circumstances, plaintiffs have a financial incentive to minimize the share of the settlement denoted as PAGA penalties so they do not have to share with the LWDA, which is not present at the negotiating table to protect its own interests.

Class action settlements can only be approved if a class can be certified. (See *Anchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 625-627.) A court approving the settlement of a PAGA claim should also consider the preliminary consideration of whether the PAGA plaintiffs are "aggrieved employees" such that they qualify as proper PAGA representative plaintiffs. (Labor Code § 2699(c).)

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DISCUSSION

The settlement was mediated with the assistance of David Rotman. As in class action settlements, the court gives “considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm’s length transaction entered without self-dealing or other potential misconduct.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129; see also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)

The Court has considered the relative strength of Plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation of this dispute; the amount offered in settlement; the extent of discovery completed and stage of the proceedings; and the experience and views of counsel that settlement is reasonable. The Court finds that the proposed gross settlement payment of \$1,500,000 is fair, reasonable and adequate.

The Court APPROVES of the parties’ choice of Atticus Administration, LLC, as their settlement administrator.

The Court APPROVES Plaintiff’s counsel’s request for attorneys’ fees in the amount of 30 percent of the gross settlement amount, or \$500,000. The Court has considered the evidence of billing rates and billed time submitted with the motion and cross-checked the requested fees against the “lodestar” calculation (the request represents an approximate 1.7 multiplier), and finds that, given the amount of time spent on the case and the hourly rates for counsel given their level of experience, the amount requested is reasonable.

"Because absent class members are not directly involved in the proceedings, oversight to ensure settlements are fair and untainted by conflict is the responsibility of both the class representative and the court." (Mark v. Spencer (2008) 166 Cal.App.4th 219, 227.)

"In any class action there is always the temptation for the attorney for the class to recommend settlement on terms less favorable to his clients because a large fee is part of the bargain. ... [T]horough judicial review of fee applications is required in all class action settlements and the fairness of the fees must be assessed independently of determining the fairness of the substantive settlement terms.' ... " 'The evil feared in some settlements - unscrupulous attorneys negotiating large attorney's fees at the expense of an inadequate settlement for the client - can best be met by a careful ... judge, sensitive to the problem, properly evaluating the adequacy of the settlement for the class and determining and setting a reasonable attorney's fee....' " (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 555-56.)

Careful judicial review in any particular case does not suggest that the Court suspects that counsel is unscrupulous. The law requires judicial review because, although the interests of counsel and client are aligned in seeking the best settlement possible for the class, the interests of counsel and the class diverge and are in opposition when counsel seeks to recover fees and costs from a common fund.

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This court has adopted a benchmark of 30 percent, and reaffirms its benchmark based on the treatment of this issue in existing caselaw. (See, e.g., *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 495 [percent of recovery approach was legally permissible, noting that Ninth Circuit has a benchmark of 25 percent, and Eleventh Circuit has a 20-30 percent benchmark, thus trial court did not abuse its discretion in awarding 33 percent]; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175 [although trial court would act within its discretion to award less than 31 percent, 31 percent was not out of line with awards in class actions, which also involved attorney fees to be paid by a protected class and required court approval]; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn 13 [noting, first, “fee awards in class actions average around one-third of the recovery,” second, “A fee award of 25 percent “ ‘[i]s the “benchmark” award that should be given in common fund cases,” and third, that the fee award in the case of 21.4 percent of the recovery was “well within what have been deemed to be reasonable ranges”]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn 11 [“Using the percentage of the benefits to class claimants as a benchmark, class counsel's initial award was 30.3 percent of the benefits, and the final fee award was 27.9 percent of the benefits. This is not out of line with class action fee awards calculated using the percentage-of-the-benefit method”]; and *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175 [“Although the trial court would be acting within its discretion to award less than 31 percent, we note that 31 percent is not out of line with awards in class actions, which, like this case, involve attorney fees to be paid by a protected class and that require court approval”).

The Court has reviewed and GRANTS an award of up to \$19,695.65 to counsel as compensation for litigation costs, which reflect the parties’ costs as of the filing of this motion. (Bell Decl., par.44., Exh. 5)

The Court has reviewed and APPROVES a incentive award of \$10,000 to Plaintiff, to be paid from the gross settlement amount. The evidence shows that Plaintiff dedicated significant personal time to this case, remaining fully involved and devoting time and effort to assisting counsel, prosecuting the claims, and finalizing the settlement. Given the risks undertaken and the effort devoted to this litigation, a total incentive award of \$10,000 to the named Plaintiff is warranted under the circumstances. (Lane Decl., par. 4-8.)

The Court ORDERS Plaintiff to file a signed version of the Lane declaration.

The Court ORDERS that 10 percent of the revised fee award (\$50,000) shall be kept in the settlement administrator’s trust fund until the completion of the distribution process and Court approval of a final accounting. The Administrator shall not release these funds to counsel until the Court determines that these conditions have been met.

The Court hereby SETS a compliance hearing for September 18, 2023, at 9:30 a.m., in Department 512, Hayward Hall of Justice, at which time the Court will consider evidence that the distribution process is complete and that a final accounting may be approved.

Compliance Hearing re: Motion Approving PAGA Settlement is scheduled for 09/18/2023 at 09:30 AM in Department 512 at Hayward Hall of Justice.

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Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

Dated: 06/16/2023

A handwritten signature in black ink, appearing to read 'Eumi Lee', with a stylized, flowing script.

Eumi Lee / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	FILED Superior Court of California County of Alameda 06/22/2023
PLAINTIFF/PETITIONER: Matthew Lane	Chad Finke, Executive Officer / Clerk of the Court By: <u>E. Romero</u> Deputy
DEFENDANT/RESPONDENT: Ferguson Enterprises, LLC	E. Romero
CERTIFICATE OF MAILING	CASE NUMBER: 22CV020738

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

JESSICA L. CAMPBELL
AEGIS LAW FIRM, PC
9811 IRVINE CENTER DRIVE, SUITE 100
Irvine, CA 92618

Dated: 06/22/2023

Chad Finke, Executive Officer / Clerk of the Court

By:

E. Romero

E. Romero, Deputy Clerk

CERTIFICATE OF MAILING